

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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INGINIO HERNANDEZ,

Plaintiff,

v.

RENEE BAKER et al.,

Defendants.

Case No. 3:14-cv-307-MMD-WGC

ORDER

This action is a *pro se* civil rights complaint filed pursuant to 42 U.S.C. § 1983 by a state prisoner. On August 6, 2014, this Court issued an order dismissing the complaint with leave to amend and directed Plaintiff to file a second amended complaint within thirty (30) days. (Dkt. no. 5 at 10.) The thirty-day period has now expired, and Plaintiff has not filed a second amended complaint or otherwise responded to the Court's order.

District courts have the inherent power to control their dockets and "[i]n the exercise of that power, they may impose sanctions including, where appropriate . . . dismissal" of a case. *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action, with prejudice, based on a party's failure to prosecute an action, failure to obey a court order, or failure to comply with local rules. See *Ghazali v. Moran*, 46 F.3d 52, 53-54 (9th Cir. 1995) (dismissal for noncompliance with local rule); *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (dismissal for failure to comply with an order requiring amendment of complaint); *Carey v. King*, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (dismissal for failure to comply with local rule requiring *pro se* plaintiffs to keep court apprised of address); *Malone v.*

1 *U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to comply
2 with court order); *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986) (dismissal
3 for lack of prosecution and failure to comply with local rules).

4 In determining whether to dismiss an action for lack of prosecution, failure to
5 obey a court order, or failure to comply with local rules, the court must consider several
6 factors: (1) the public's interest in expeditious resolution of litigation; (2) the court's need
7 to manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy
8 favoring disposition of cases on their merits; and (5) the availability of less drastic
9 alternatives. *Thompson*, 782 F.2d at 831; *Henderson*, 779 F.2d at 1423-24; *Malone*,
10 833 F.2d at 130; *Ferdik*, 963 F.2d at 1260-61; *Ghazali*, 46 F.3d at 53.

11 In the instant case, the Court finds that the first two factors, the public's interest in
12 expeditiously resolving this litigation and the Court's interest in managing the docket,
13 weigh in favor of dismissal. The third factor, risk of prejudice to Defendants, also weighs
14 in favor of dismissal, since a presumption of injury arises from the occurrence of
15 unreasonable delay in filing a pleading ordered by the court or prosecuting an action.
16 See *Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor — public
17 policy favoring disposition of cases on their merits — is greatly outweighed by the
18 factors in favor of dismissal discussed herein. Finally, a court's warning to a party that
19 his failure to obey the court's order will result in dismissal satisfies the "consideration of
20 alternatives" requirement. *Ferdik*, 963 F.2d at 1262; *Malone*, 833 F.2d at 132-33;
21 *Henderson*, 779 F.2d at 1424.

22 The Court's order requiring Plaintiff to file a second amended complaint within
23 thirty (30) days expressly stated: "It is further ordered that if Plaintiff fails to file a second
24 amended complaint curing the deficiencies outlined in this order, this action will be
25 dismissed with prejudice for failure to state a claim." (Dkt. no. 5 at 10.) Thus, Plaintiff
26 had adequate warning that dismissal would result from his noncompliance with the
27 Court's order to file a second amended complaint within thirty (30) days.


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1 It is therefore ordered that this action is dismissed with prejudice based on
2 Plaintiff's failure to file a second amended complaint in compliance with this Court's
3 August 6, 2014, order and for failure to state a claim.

4 It is further ordered that the motion to proceed *in forma pauperis* (dkt. no. 4) is
5 denied as moot.

6 It is further ordered that the Clerk of Court shall enter judgment accordingly.

7 DATED THIS 11th day of September 2014.

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11 MIRANDA M. DU
12 UNITED STATES DISTRICT JUDGE
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